

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JENNIFER DOLD, personal representative  
of the estate of Alexander Dold; and KATHY  
DUNCAN,

Plaintiffs,

v.

SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
BRYSON McGEE; and CODY McCOY,

Defendants.

NO. 2:20-cv-00383-RAJ

SECOND DECLARATION OF JAMES  
E. LOBSENZ IN SUPPPORT OF  
PLAINTIFFS' MOTION TO  
DISQUALIFY DEFENDANTS'  
EXPERT MARK KROLL

I, JAMES E. LOBSENZ, do hereby declare under penalty of perjury under the laws of  
the United States of America that the following facts are true and correct:

1. I am counsel for the Plaintiffs. I have personal knowledge of the facts set forth here.
2. Attached to this declaration as Appendix A is a true and correct copy of a list of the  
training courses Defendant McGee took which includes, inter alia, a 40-hour  
training entitled "Police Response to the Mentally Ill.
3. Attached to this declaration as Appendix B are true and correct copies of pages 18-  
19 from the Rule 26 expert report of William Harmening.
4. Attached to this declaration as Appendix C are true and correct copies of two pages  
from the Taser training course, developed by Axon Enterprises, and which was taken

SECOND DECLARATION OF JAMES E. LOBSENZ IN SUPPPORT OF PLAINTIFFS' MOTION TO DISQUALIFY DEFENDANTS'  
EXPERT MARK KROLL – 1  
(2:20-cv-00383-RAJ)

**CARNEY BADLEY SPELLMAN, P.S.**  
701 Fifth Avenue, Suite 3600  
Seattle, WA 98104-7010  
(206) 622-8020

1 by Defendant McGee, which refer to the metabolic effects of multiple taser  
2 applications.

3 5. Attached to this declaration as Appendix D are true and correct copies of an excerpt  
4 from the deposition of Mark Kroll.

5 6. Attached to this declaration as Appendix E are true and correct copies of excerpts  
6 from deposition of Dr. Kris Sperry.

7 DATED this 8th day of April, 2022.

8 s/ James E. Lobsenz

9 James E. Lobsenz WSBA #8787

10 Attorneys for Plaintiffs

11 CARNEY BADLEY SPELLMAN, P.S.

12 701 Fifth Avenue, Suite 3600

13 Seattle, WA 98104

14 Phone: (206) 622-8020

15 [lobsenz@carneylaw.com](mailto:lobsenz@carneylaw.com)

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 8th day of April, 2022, I electronically filed the foregoing  
3 **SECOND DECLARATION OF JAMES E. LOBSENZ IN SUPPORT OF PLAINTIFFS’**  
4 **MOTION TO DISQUALIFY DEFENDANTS’ EXPERT MARK KROLL** with the Clerk  
of the Court using the CM/ECF system which will send notification of such filing to the  
following:

5 **Attorneys for Defendant Snohomish County**

6 Ted Buck [tbuck@freybuck.com](mailto:tbuck@freybuck.com)  
7 Delaney DiGiovanni [ddigiovanni@freybuck.com](mailto:ddigiovanni@freybuck.com)  
8 Nick Gross [ngross@freybuck.com](mailto:ngross@freybuck.com)  
Evan Bariault [ebariault@freybuck.com](mailto:ebariault@freybuck.com)

9 **Attorneys for Defendants Cody McCoy and Bryson McGee**

10 Shannon M. Ragonesi [sragonesi@kbmlawyers.com](mailto:sragonesi@kbmlawyers.com)  
11 Richard B. Jolley [rjolley@kbmlawyers.com](mailto:rjolley@kbmlawyers.com)  
Sean M. Dwyer [sdwyer@kbmlawyers.com](mailto:sdwyer@kbmlawyers.com)

12 DATED this 8th day of April, 2022.

13 s/ Deborah A. Groth  
14 Legal Assistant

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
SECOND DECLARATION OF JAMES E. LOBSENZ IN SUPPPORT **CARNEY BADLEY SPELLMAN, P.S.**  
OF PLAINTIFFS’ MOTION TO DISQUALIFY DEFENDANTS’ 701 Fifth Avenue, Suite 3600  
EXPERT MARK KROLL – 3 Seattle, WA 98104-7010  
(2:20-cv-00383-RAJ) (206) 622-8020

# APPENDIX A

# Snohomish County Sheriff's Office

Date: 11/07/2017

## Personnel Training Information

Page 1172

MC GEE, BRYSON J  
ID No. 1500  
GOLD BAR

Total Training Hours: 376.05

Training Courses	Hours	From	To
SCSO FIREARMS TRAINING	0.50	04/01/2009	04/30/2009
OFFICER INVOLVED SHOOTINGS	8.00	04/16/2009	04/16/2009
ROLL CALL TRAINING	0.50	04/18/2009	04/18/2009
COUNTERFEITING AND PIRACY LAW ENF TRAINING	5.00	05/12/2009	05/12/2009
WORK PLACE HARASSMENT TRAINING	0.50	05/27/2009	06/10/2009
BAC VERIFIER DATAMASTER	4.00	05/28/2009	05/28/2009
SCSO FIREARMS TRAINING	0.50	06/01/2009	06/18/2009
DEFENSIVE TACTICS	0.50	06/01/2009	06/18/2009
PERSONAL WATERCRAFT OPERATIONS COURSE	9.00	06/05/2009	06/05/2009
POLICE RESPONSE TO THE MENTALLY ILL	40.00	06/08/2009	06/12/2009
CRISIS SITE ORIENTATION	0.15	07/24/2009	07/28/2009
ROLL CALL TRAINING	0.15	08/01/2009	08/01/2009
SCSO FIREARMS TRAINING	0.50	08/03/2009	08/20/2009
MARINE SERVICES UNIT TRAINING	8.00	09/08/2009	09/08/2009
POLICE MOUNTAIN BICYCLE PATROL SCHOOL	20.00	09/15/2009	09/15/2009
CONTROL TACTICS	0.50	10/01/2009	10/31/2009
MARINE LAW ENFORCEMENT CONFERENCE	14.00	10/06/2009	10/08/2009
SCSO FIREARMS TRAINING	0.50	10/07/2009	10/29/2009
TASER TARGETING	0.50	10/22/2009	10/22/2009
LATERAL VASCULAR NECK RESTRAINT	4.00	12/03/2009	12/22/2009
ROLL CALL TRAINING	0.25	01/02/2010	01/02/2010
MARINE SERVICES UNIT TRAINING	3.00	01/20/2010	01/20/2010
SCSO FIREARMS TRAINING	0.50	02/01/2010	02/28/2010
DOMESTIC VIOLENCE RCW TRAINING	0.20	02/19/2010	02/19/2010
WORK STATION TRAINING - EAST PRECINCT	0.50	02/22/2010	02/22/2010
WORK PLACE HARASSMENT TRAINING	0.50	02/24/2010	02/24/2010
WORK STATION TRAINING - EAST PRECINCT	0.50	02/24/2010	02/24/2010
WORK STATION TRAINING - GOLD BAR	0.50	04/01/2010	04/01/2010
SHIELD OPERATOR'S COURSE - LEVEL 1 INTRO	0.50	04/05/2010	04/05/2010
MARINE SERVICES UNIT TRAINING	4.00	04/07/2010	04/07/2010
BASIC MARINE LAW ENFORCEMENT COURSE	40.00	04/12/2010	04/16/2010
MARINE LAW ENFORCEMENT OFFICER MBE	8.00	04/20/2010	04/20/2010
WORK STATION TRAINING - GOLD BAR	0.50	04/21/2010	04/21/2010
SHIELD OPERATOR'S COURSE - LEVEL 1 INTRO	3.00	04/22/2010	04/22/2010

# APPENDIX B

## CIT/ DE-ESCALATION

When the two deputies entered the house and chased Dold into the bedroom, not only was his resistance predictable, but so too was his increased resistance in response to their escalation of force. The deputies should reasonably have known, based on their training<sup>10</sup> and the initial radio traffic that Dold was suffering from some level of mental illness, specifically thought disorder. They had information that he was “mental” and had discontinued taking his meds. The training received by police officers, whether in basic academy training or the more advanced training taken by McGee, includes the proper way to respond to a situation where an individual is demonstrating behavior associated with mental illness. Specifically, the training describes the symptoms and behaviors indicative of a thought disorder (i.e., schizophrenia). They include:

- Bizarre delusional thinking
- Hallucinations
- Incoherent, disconnected thoughts and speech
- Expression of irrational fear
- Deteriorated self-care
- Poor reasoning
- Strange and erratic behaviors

The advanced training taken by McGee was the 40-hour Crisis Intervention Team (“C.I.T.”) training that police officers across the U.S. complete.<sup>11</sup> This training teaches officers to know and expect the following:

- A thought-disordered suspect will almost always demonstrate high levels of paranoia.

---

<sup>10</sup> McGee attended the 40-hour “Police Response to the Mentally Ill” training in June 2009 (see Bates 024595). McCoy would have received abbreviated de-escalation training during his basic academy training.

<sup>11</sup> Bureau of Justice Assistance: *Effective Community Responses to Mental Health Crises: A National Curriculum for Law Enforcement Based on best practices from CIT programs Nationwide* (Instructor Guide).

- They will respond negatively to being physically touched and will resist any attempt at restraint.
- They will demonstrate poor judgement, and once emotionally escalated, attempts to de-escalate will almost always fail.
- They are at an increased risk for excited delirium and sudden death after a prolonged physical encounter.

It was imperative that the deputies approach this encounter with de-escalation in mind. The fact that Dold purportedly swung at and struck McGee, again, a fact that is in dispute, should not have changed this. Even if criminal charges were at that point warranted, they reasonably should have known that escalating their own respond and level of force would only escalate Dold's emotional and physical reaction to it and lead to a dangerous and possibly deadly outcome.

#### OTHER USE OF FORCE

In addition to the use of the Tasers and the LVNR, the additional uses of force during the encounter were described by the deputies

##### McGee

- Several closed fist strikes to the body (bedroom)

##### McCoy

- Knee pin face to the floor (bedroom)
- Four to six punches to the face (bedroom)
- Four strikes to the shoulder with expandable baton

##### Johnson

- Three kicks



# APPENDIX C

## **4. Restrain Fast – Avoid Prolonged Exposures**

- Cuff under power – and FAST
- Long or multiple CEW applications extend stress, pain, and metabolic effects
- You need to be able to clearly justify each activation or continuous activation

# **Physiologic/Metabolic Effects**

CEWs may produce effects that could increase the risk of sudden death, including changes in:

- Blood chemistry
- Blood pressure
- Respiration
- Heart rate and rhythm
- Adrenaline and stress hormones

The longer the CEW exposure, the greater the potential effects. Use reasonable efforts to minimize the number and duration of CEW exposures

# APPENDIX D

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

---

JENNIFER DOLD, personal	)	
representative of the estate	)	
of Alexander Dold; and	)	
KATHY DUNCAN,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. 2-20-cv-00383-RAJ
	)	
SNOHOMISH COUNTY, a political	)	
subdivision of the State of	)	
Washington; BRYSON McGEE; and	)	
CODY McCOY,	)	
	)	
Defendants.	)	

---

REMOTE VIDEO RECORDED DEPOSITION UPON ORAL EXAMINATION OF  
MARK WILLIAM KROLL, PhD

---

WEDNESDAY, JANUARY 27, 2022  
DEHUFFDEPO.COM

1 A Well, not from Axon.

2 Q Not from Axon. So, in the last five years it's been  
3 pretty much 120 roughly a year for the consulting?

4 A From Axon.

5 Q From Axon. Okay. And then you have consulting income  
6 from other people, not Axon; correct?

7 A Correct.

8 Q Who are they,

9 A I'm not comfortable just giving out my whole personal  
10 financial statement. That's between me and the IRS.

11 Q So, you are declining to answer my question about that?

12 A I'm declining to give you exact how much money I make  
13 per year and how I make it. I've been playing ball with  
14 you because Haemonetics and Axon are public companies,  
15 so you can get this yourself off the internet in about  
16 four clicks. I am not comfortable telling you my whole  
17 financial situation.

18 Q Have you been hired as an expert in any criminal cases?

19 A I have.

20 Q Can you name any of them?

21 A USA v. Byerly. USA v.... Blanking on the guy's name  
22 right now. He was a big manufacturer of synthetic  
23 drugs. Georgia v. Deputies.

24 Q Sorry. Georgia v. Deputies?

25 A Georgia v. Washington County Deputies.

# APPENDIX E

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

---

JENNIFER DOLD, personal	)	
representative of the	)	
estate of Alexander Dold;	)	
and KATHY DUNCAN, mother	)	
of Alexander Dold,	)	No. 2:20-cv-00383-RAJ
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
SNOHOMISH COUNTY, a	)	
political subdivision of	)	
the State of Washington;	)	
BRYSON MCGEE; and CODY	)	
MCCOY,	)	
	)	
Defendants.	)	

---

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION OF  
KRIS SPERRY, M.D.

---

9:02 a.m. - 12:45 p.m.

Wednesday, January 19, 2022

Remote Video Teleconference

REPORTED BY:  
JOLENE C. HANCA, RPR, CCR 2741



1 officers.

2 So the Taser, really except in vanishingly rare  
3 cases, doesn't directly cause someone's death, nor result  
4 in any tissue damage or heart damage that contributes to  
5 the death, but, as I said, the only real effect is if it  
6 is the -- is on the underlying physiology, if there are  
7 cumulative discharges.

8 Does that make sense to you?

9 Q. Yes. And the cumulative effect of the  
10 discharges would be that that would contribute to stress  
11 that ultimately creates acidosis?

12 A. Basically, yes. Yeah, I mean increased  
13 adrenalin production that, of course, is involuntary, and  
14 then, you know, as I said, oxygen utilization and  
15 impairment of exhaling enough carbon dioxide such that  
16 the blood pH becomes more and more acidotic and then, you  
17 know, can reach critical, critical point, critical levels  
18 if indeed everything is all continued.

19 Q. Just based on what you saw from the autopsy, is  
20 it your opinion that the Tasers, or Taser applications  
21 contributed in any way to Mr. Dold's death?

22 A. Well, the problem is, and this is one of the  
23 difficulties about these deaths, the fact that the Taser  
24 was used and there were apparently multiple attempts at  
25 applying the Taser current, I can't tell you that the

1 physiology, but people who are adapted to that recover  
2 just fine and certainly don't have any problems, but with  
3 a very intense struggle like this, with Mr. Dold and the  
4 two officers, this is going to generate lactic acid and  
5 generate, well, reduce in -- excuse me, result in an  
6 oxygen debt and an accumulation of carbon dioxide in the  
7 blood, and that produces acidosis.

8 In fact, we talked about this a couple hours  
9 ago with the Taser discharges. Tasers are painful, and  
10 pain produces adrenalin, which then accentuates the  
11 production of lactic acid and enhances the oxygen debt  
12 that is present.

13 So you don't kill someone directly with a  
14 Taser, but factored into everything else, the acidosis  
15 increases. So -- excuse me -- ultimately there is a  
16 breaking point that is reached that will cause sudden  
17 death just from the restraint and the intense physical  
18 action, as well as the Taser application, all combined  
19 together, without asphyxia.

20 Now, when some type of asphyxial mechanism, say  
21 compression of the neck is factored in, an individual  
22 such as Mr. Dold is much more sensitive to interruptions  
23 in blood flow going to the brain, and a sudden cardiac  
24 death can result from an asphyxial mechanism that is not  
25 as intense, or not as severe in the absence of any